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15 United States of America

16 UNITED STATES DISTRICT COURT  
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
18 SOUTHERN DIVISION

19 UNITED STATES OF AMERICA, ) NO. SA CR 08-00336-JVS  
20 Plaintiff, ) GOVERNMENT'S SENTENCING POSITION;  
21 v. ) MOTION FOR DOWNWARD DEPARTURE;  
22 MARIO COVINO, ) MEMORANDUM OF POINTS AND  
23 Defendant. ) AUTHORITIES  
24 ) Sentencing Hearing:  
March 11, 2013  
8:00 a.m.

25 Plaintiff United States of America, by and through its  
26 attorneys of record, the United States Department of Justice,  
27 Criminal Division, Fraud Section, and the United States Attorney  
28 for the Central District of California (collectively, "the

1 government"), hereby files its Sentencing Position and Motion for  
2 Downward Departure for defendant Mario Covino. The government's  
3 position and motion are based upon the attached memorandum of  
4 points and authorities, the files and records in this matter, as  
5 well as any evidence or argument presented at any hearing on this  
6 matter.

7 DATED: February 1, 2013

Respectfully submitted,

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18 /s/

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20 Attorneys for Plaintiff  
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1                                    MEMORANDUM OF POINTS AND AUTHORITIES

2                                    I.

3                                    INTRODUCTION AND THE PSR

4            Defendant Mario Covino ("defendant") is before the court for  
5 sentencing following his plea of guilty to an information  
6 charging him with one count of conspiracy to violate the laws of  
7 the United States, namely, to violate the Foreign Corrupt  
8 Practices Act ("FCPA"), 15 U.S.C. § 78dd-2. Defendant's guilty  
9 plea arises from his involvement in causing corrupt payments to  
10 be made by his employer, Control Components, Inc. ("CCI"), to  
11 foreign officials employed at state-owned enterprises for the  
12 purpose of obtaining and retaining business for CCI.

13           Applying the advisory United States Sentencing Guidelines,  
14 the United States Probation Office ("USPO") calculated that  
15 defendant's total offense level is 29, based on:

16           (1) a base offense level of 12 (U.S.S.G. §§ 2X1.1(a) and  
17 2C1.1(a)(2));

18           (2) a two-level increase because the offense involved more  
19 than one bribe payment (§ 2C1.1(b)(1));

20           (3) an 18-level increase because the value of the benefits  
21 CCI received in return for the payments was more than \$2.5  
22 million (§§ 2C1.1(b)(2) and 2B1.1(b)(1)(J)); and

23           (4) a three-level reduction for defendant's acceptance of  
24 responsibility (§ 3E1.1). Pre-Sentence Report ("PSR") ¶¶ 38-52.  
25 The USPO further calculated that defendant's criminal history is  
26 category I. PSR ¶¶ 54-59. The statutory maximum for defendant's  
27 offense of conviction is 60 months; accordingly, because the  
28 Guidelines range for an offense level of 29 and a criminal

1 history category of I is 87-108 months, or greater than the  
2 statutory maximum, that statutory maximum becomes the Guidelines  
3 range. PSR ¶ 95.<sup>1</sup>

4 **II.**

5 **GOVERNMENT'S RESPONSE TO THE PSR**

6 The government has no factual objections to the PSR and  
7 adopts the factual findings contained in the PSR. The government  
8 concurs in the Probation Office's determination of defendant's  
9 adjusted offense level and criminal history category. Provided  
10 that defendant continues to demonstrate an acceptance of  
11 responsibility through the time of sentencing, the government  
12 recommends that the Court reduce defendant's offense level by  
13 three levels under § 3E1.1.

14 The government's current position reflects a modification of  
15 its position in the plea agreement. In the plea agreement, the  
16 parties stipulated that defendant's total offense level should be  
17 32. The plea agreement's calculation of defendant's total  
18 offense level includes a three-level enhancement for aggravating  
19 role under U.S.S.G. § 3B1.1.

20 In the PSR, the Probation Officer notes that such an  
21 aggravating role enhancement was not applied by the Court to CCI  
22 executives Stuart Carson and Paul Cosgrove at their sentencing  
23 hearings. PSR ¶ 45 n.1. (Nor did the Court apply such an  
24 aggravating role enhancement to David Edmonds; his sentencing  
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26 <sup>1</sup> The government notes that, given defendant's criminal  
27 history category of I, a Guidelines range of 60 months would be a  
28 Guidelines range equivalent to an offense level of 24 (51 to 63  
months) or 25 (57 to 71 months).

1 hearing took place after the PSR was disclosed.) The Probation  
2 Officer concluded that defendant worked in concert with these  
3 executives and others in furtherance of CCI's "friends-in-camp"  
4 business model, a business model that encouraged corrupt payments  
5 to customers. Id. The Probation Officer thus concluded that no  
6 role adjustment was appropriate. Id. Notwithstanding the  
7 provisions of the plea agreement, the government agrees with the  
8 Probation Officer's conclusion.

9 **III.**

10 **GOVERNMENT'S MOTION FOR DOWNWARD DEPARTURE**

11 Pursuant to U.S.S.G. § 5K1.1, upon government motion, the  
12 Court may reduce a sentence to reflect a defendant's substantial  
13 assistance in the prosecution of another person who has committed  
14 an offense. U.S.S.G. § 5K1.1(a) enumerates five factors that the  
15 Court may consider to determine the appropriate sentencing  
16 reduction where a defendant provides such assistance. Pursuant  
17 to § 5K1.1, the government moves for a downward departure based  
18 on defendant's substantial assistance.

19 Beginning in February 2008, during the initial stages of the  
20 government's investigation, defendant provided and subsequently  
21 continued to provide the government with invaluable information  
22 concerning the bribery practices at CCI. Defendant served as  
23 CCI's Director of Worldwide Factory Sales and as Paul Cosgrove's  
24 "right hand man." As a result, defendant had a first-hand view  
25 of CCI's FIC sales model and the improper payments that were an  
26 integral part of the model. Defendant gave the government an  
27 insider's view of the company's sales practices, accounting  
28 systems, terminology, executives, employees, and agents, and

1 provided a compelling narrative for the documents that indicated  
2 improper payments.

3 Defendant entered into a plea agreement in December 2008 and  
4 pleaded guilty in January 2009. He was the first CCI employee to  
5 plead guilty. In his plea agreement, defendant agreed to meet  
6 with the government, to respond truthfully and completely to all  
7 questions that may be put to him, and, if asked, to testify at  
8 the anticipated trial against other CCI executives. The  
9 government's indictment of six individual defendants followed in  
10 April 2009.

11 Defendant's cooperation provided critical support for the  
12 indictment. Defendant was one of two cooperating defendants  
13 whose anticipated testimony was central to the government's case.  
14 For several of the counts and overt acts in the indictment,  
15 defendant's statements were the only witness testimony the  
16 government had available to corroborate payment records and e-  
17 mails.

18 After the return of the indictment, the government disclosed  
19 defendant's statements to defense counsel. The government  
20 expected defendant to be one of its primary witnesses at trial.  
21 Defendant's cooperation thus led to five guilty pleas of other  
22 CCI executives - Stuart Carson, Paul Cosgrove, Hong "Rose"  
23 Carson, David Edmonds, and Flavio Ricotti. His cooperation also  
24 assisted in the government's corporate resolution with CCI,  
25 wherein the company pleaded guilty to bribery offenses and paid  
26 an \$18.2 million fine.

27 Based on the significance of defendant's cooperation, the  
28 duration of defendant's cooperation, and the importance of

1 defendant's cooperation to the government's successful resolution  
2 of its case against the other individual defendants and the  
3 company, the government believes that an extraordinary downward  
4 departure is warranted under these circumstances. Accordingly,  
5 the government moves for a downward departure of 10 levels.<sup>2</sup>

6 IV.

7 GOVERNMENT'S SENTENCING RECOMMENDATION

8 According to United States v. Booker, 543 U.S. 220 (2005),  
9 and Rita v. United States, 551 U.S. 338 (2007), this Court must  
10 consider the Sentencing Guidelines and the guidelines range  
11 determined under those guidelines when sentencing. That  
12 guidelines range then becomes one of several factors identified  
13 in 18 U.S.C. § 3553(a) that the Court must look to when  
14 fashioning defendant's sentence. See United States v. Cantrell,  
15 433 F.3d 1269, 1280 (9th Cir. 2006).

16 The Probation Officer concludes that defendant's  
17 "extraordinary" acceptance of responsibility warrants a four-  
18 level downward departure, and his history and characteristics  
19 warrant a two-level variance from the otherwise applicable  
20 guidelines sentencing range. (PSR Ltr. at 4-5.) In addition,  
21 the Probation Officer determines that a further variance is  
22 warranted to avoid an unwarranted sentencing disparity with other  
23 similarly situated defendants, namely, Stuart Carson, Paul  
24 Cosgrove, Hong "Rose" Carson, and David Edmonds. (PSR Ltr. at

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26 <sup>2</sup> Where, as here, the statutory maximum sentence is less  
27 than the calculated guidelines range, the starting point for any  
28 downward departure is the statutory maximum sentence. See  
U.S.S.G. § 5G1.1(a); United States v. Shaw, 313 F.3d 219, 223-24  
(4th Cir. 2002).

1 5.)

2 The government agrees in part with the Probation Officer's  
3 analysis. Defendant accepted responsibility for his conduct in  
4 early 2008, shortly after the government's investigation began in  
5 2007. This early acceptance of responsibility can be contrasted  
6 with the much later acceptance of responsibility by the Carsons,  
7 Cosgrove, and Edmonds, each of whom pleaded guilty only after  
8 approximately three years of hard-fought, protracted litigation.

9 Defendant's total offense level as calculated by the  
10 guidelines already recognizes through the third point under  
11 U.S.S.G. § 3E1.1(b) the value to the government and the Court of  
12 such early acceptance. This three point deduction, however, is  
13 not truly recognized where, as here, its application results in a  
14 Guidelines range that is still greater than the statutory  
15 maximum.

16 The government agrees that a sentence which contains any  
17 custody component for defendant would create a disparity. Having  
18 pleaded guilty and accepted responsibility at such an early  
19 stage, it is only fair that defendant do no worse than the  
20 defendants who resisted the government's case for three years and  
21 only struck deals on the eve (or near the eve) of trial. As a  
22 result, the government recommends a variance to take into account  
23 defendant's early acceptance of responsibility and the  
24 unwarranted sentencing disparity with other defendants.

25 The government's recommended ten-level 5K1.1 downward  
26 departure, when calculated from an offense level of 24, see infra  
27 note 1, results in an offense level of 14 and a guidelines range  
28 of fifteen to twenty-one months. For the reasons set forth



1 above, the government recommends a further variance that results  
2 in a sentence of probation.

3 **V.**

4 **CONCLUSION**

5 The government recommends a sentence of probation.  
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